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Supreme Court, U. S.
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# IN THE SUPREME COURT OF THE UNITED STATES
## OCTOBER TERM, 1971

No. 71-1069

ASSOCIATED ENTERPRISES, INC. and JOHNSTON FUEL LINERS,

Appellants,

-vs-

TOLTEC WATERSHED IMPROVEMENT DISTRICT,

Appellee.

APPEAL FROM THE SUPREME COURT OF WYOMING

## BRIEF OF APPELLANTS

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## OPINION OF WYOMING SUPREME COURT OFFICIALLY REPORTED AT 490 P.2d 1069 (1971)

## STATEMENT OF GROUNDS FOR INVOKING THIS COURT'S JURISDICTION

This is an appeal from the Judgment and Mandate of the Wyoming Supreme Court entered in a cause drawing into question the validity of the Wyoming Statutes providing for the creation of a Watershed Improvement District as being repugnant to the Fourteenth Amendment of the Constitution of the United States. Appeal in such cases is provided for by 28 U.S.C.A. Sec. 1257(2).

The opinion sought to be reviewed was entered by the Wyoming Supreme Court on November 22, 1971. Notice of Appeal to the Supreme Court of the United States was filed February 15, 1972 in the District Court in and for Albany County, Wyoming.

The United States Supreme Court's jurisdiction is invoked on the ground that the Wyoming Statutes of 1957 relating to the creation and operation of Watershed Improvement Districts violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Such statutes provide that only landowners may vote and the weight of the vote is determined by the number of acres owned in elections for the creation of

the district, for the election of members to the board of directors, the issuance of bonds, and the discontinuance of such a district.

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment, Section 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wyoming Statutes 1957, Volume 9, Sections 41-354.1 through 41-354.26 (1971 Cumulative Supplement to Vol. 9 at pages 243 through 252) are involved. The pertinent sections of the Act are set forth here and the entire provisions of the Act appear as Appendix A to this brief.

> Sec. 41-354.1. **Definitions.** - C. "Landowner" means any person, firm or corporation holding title to, or occupying under a contract of purchase, any land lying

within a watershed improvement district organized or proposed to be organized under the provisions of this act. (Sec. 41-354.1 to 41-354.26).

Sec. 41-354.2. **Purposes of act.** - The purposes of this act )Sec. 41-354.1 to 41-354.26) are to provide for the prevention and control of erosion, floodwater and sediment damages, and the storage, conservation development, utilization, and disposal of water, and thereby to preserve and protect land and water resources, and protect and promote the health, safety, and general welfare of the people of this state. (Laws 1961, ch. 215, Sec. 2.)

Sec. 41-354.8. **Referendum prerequisite to establishment — Generally.** - After the board of supervisors has made and recorded a determination that there is a need, in the interest of public health, safety and welfare, for the creation of the proposed watershed improvement district, it shall consider the question whether the operation of such a district within the proposed boundaries with the powers conferred upon such district in this act (Sec. 41-354.1 to 41-354.26) is administratively practicable and feasible. To assist the board of supervisors in this determination, the board shall, within not more than sixty days after entry of the finding that there is need for the organization of such a district and the determination of the

boundaries of such district, hold a referendum within the proposed district upon the proposition of the creation of such district. Due notice of such referendum shall be given by the board of supervisors. Such notice shall state the date of holding the referendum, the hours of opening and closing the polls and shall designate one or more places within the proposed district as polling places. The board of supervisors shall appoint a polling superintendent and other necessary polling officers. (Laws 1961 ch. 215, Sec. 8.)

Sec. 41-354.9. **Same — Voting; ballots; right of landowners to vote; proxies.** - A. The question to be voted on shall be submitted by ballots upon which the words "For creation of_____ Watershed Improvement District" and Against _____ Watershed Improvement District" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of the proposed watershed improvement district as determined by the board of supervisors.

B. All owners of land lying within the boundaries of the proposed district, as determined by the board of supervisors, shall be eligible to vote in the referendum. Only

such owners of lands shall be eligible to vote. Any such owner who is unable because of illness or absence from the district to appear at the polls, may appoint in writing on a form prescribed by the state soil and water conservation committee and acknowledged before a notary public or other officer authorized to administer oaths, an agent or proxy to cast a ballot for him. The appointment of agent or proxy shall be presented to the polling officers, and if it is found to be bona fide and in proper form, the holder thereof shall be allowed to vote in behalf of the owner executing the appointment. Prior to casting his ballot, each owner shall present to the polling officers an affidavit stating that he is an owner of land within the district and showing the number of acres he owns and his interest therein, and each agent or proxy shall present a similar affidavit executed by the landowner for whom he is voting. Each landowner shall be entitled to one vote in the referendum. (Laws 1961, ch. 215, Sec. 9.)

Sec. 41-354.10. **Same — Counting and recording votes; action upon results; certification of fact when created.** - The votes cast in the referendum shall be counted by the polling officers at the close of the polls and a report of the results, along with the ballots, shall be delivered to the polling

superintendent, who shall certify the results to the board of supervisors; and the board shall then consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the board of supervisors shall determine that the operation of the watershed improvement district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the board of supervisors shall determine that the operation of the watershed improvement district is administratively practicable and feasible, it shall declare the watershed improvement district to be creatd and provided, however, that the board of supervisors shall not have authority to determine that the operation of the watershed improvement district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum, which affirmative votes represent (a) majority of the acreage contained in the proposed watershed improvement district, favor creation of the watershed improvement district. Upon declaring the watershed improvement district to be created, the board of supervisors shall certify the fact of the creation of such district to the county clerk of the county or counties in which such district is situated for recordation; and such watershed improve-

ment district shall thereupon constitute a governmental subdivision of this state and a public body corporate and politic. After being recorded, the certificate of the board of supervisors shall be filed with the secretary of state, and a copy thereof shall be filed with the state soil and water conservation committee. (Laws 1961, ch. 215, Sec. 10.)

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## QUESTIONS PRESENTED FOR REVIEW

The facts in this case were stipulated, (A. 18) and reveal that the Toltec Watershed Improvement District was created under the Wyoming Statutes. Such statutes provide for a referendum, Wyoming Statutes 1957, Section 354.8 and 354.9, in which only landowners may vote and for the District to be created a majority of the landowners must vote for its creation and those affirmative votes must represent a majority of the acreage contained in the proposed district. The Wyoming Supreme Court found such statutes to be constitutional. In light of the statuory procedures and the approval of the constitutionality of such statutes by the Wyoming Supreme Court, the following two questions are presented:

1) Whether or not the limiting of the voting franchise to property owners in the creation and maintenance of a watershed improvement district violates the Equal Protection Clause of the Fourteenth Amendment in

that an unreasonable, arbitrary and capricious voting classification is created; and

2) Whether or not the weighting of the votes in a watershed improvement district election by requiring a majority of the acreage is a debasement of the votes of smaller property owners and is violative of the one man-one vote doctrine of the Fourteenth Amendment.

## STATEMENT OF THE CASE

The Appellee, Toltec Watershed Improvement District, hereinafter referred to as "Toltec", was organized under the provisions of Wyoming Statutes 1957, Sections 41-354.1 through 41-354.26. Pursuant to statutory provisions a referendum was held on May 12, 1969. At the election Associated Enterprises, Inc., a Wyoming corporation, was allowed to vote as it owned land within the proposed district.

Johnston Fuel Liners, a corporation, owns livestock and runs them on land owned by Associated Enterprises and leased by Johnston Fuel Liners, and which lands are within the Toltec District (A.19). Although given notice of the time and place of the referendum Johnston Fuel Liners had no statutory right to vote and did not vote.

On June 22, 1970 Toltec instituted this action in the District Court in and for Albany County, Wyoming suing Associated Enterprises, Inc. for a right of entry upon lands

owned by Associated and leased to Johnston Fuel Liners. Entry was sought for the purpose of carrying out studies to determine the feasibility of constructing a dam and reservoir to inundate a portion of Appellants' lands.

Johnston Fuel Liners intervened in the action. The facts were stipulated and the trial judge heard argument of counsel for the parties and entered an Order Judgment, (A.26-28) allowing intervention of the lessee Johnston Fuel Liners.

In the Answer of Associated Enterprises, Inc. (A.8-12) and the Motion to Intervene and Answer of Johnston Fuel Liners (A.14-16) Appellants contended that Toltec was organized under a statute of Wyoming which violated the Equal Protection Clause of the Wyoming and United States Constitutions.

On argument to the trial judge the constitutionality of the Wyoming Watershed Improvement Act was upheld, and on appeal to the Wyoming Supreme Court the constitutionality of the Act was again affirmed. Its opinion is officially reported at 490 P.2d 1029. The Court found the Equal Protection Clause of the Fourteenth Amendment inapplicable to proprietory function of legal subdivisions, held that in equal protection cases involving the elective franchise the burden of proving a statute unconstitutional falls upon the party asserting the unconstitutionality, and then found a "tendency for judges and courts to over-

react to decisions of the United States Supreme Court". In effect the Wyoming Supreme Court simply refused to extend the one man-one vote concept to a local unit of government.

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## SUMMARY OF ARGUMENT

1. The limiting of the voting franchise to property owners in the creation and maintenance of a watershed improvement district violates the "Equal Protection' clause of the Fourteenth Amendment in that an unreasonable, arbitrary and capricious voting classification is created.

The Toltec Watershed Improvement District was created as a result of a referendum held May 12, 1969. All requisite statutory procedures were followed. The requirements of the statute are that only the owners of land lying within the proposed district may vote and the proposal to form the district must carry by the affirmative vote of landowners owning more than a majority of the number of acres in the proposed district.

Under the Wyoming Statutes a watershed improvement district is a governmental entity and body politic possessing the power to levy and collect assessments, buy and sell real and personal property, exercise the power of eminent domain, borrow money and sell bonds.

Appellants contend the requirement that to vote one must own land is an unconstitutional voting classification. Reasonable classi-

fications of voters and voting restrictions have been recognized as constitutional but the burden of showing them to be constitutional falls upon the one justifying the classification and restriction, which burden was not carried by Appellee. No compelling state interest dictates the denial of the elective franchise to non-landowners in watershed improvement districts.

A classification of voters based upon being a parent or guardian has been held to be unreasonable. A classification based upon being a member of the armed forces, or owning real property has been held to be unconstitutional.

2. The weighting of the votes by a majority of the acreage is a debasement of the votes of the smaller property owners and is violative of the one man-one vote rule.

The United States Constitution guarantees to a voter a vote equal in value to all other votes. Debasement of an elector's vote by geographical units, by wealth through ownership of land, or the value of property owned as reflected by assessment rolls has been held unconstitutional. This concept has been extended wherever the right to vote is exercised in a governmental function without regard to whether the election is for a Congressman, State Legislator, School Board member, County Commissioner, or for issuance of bonds and creation of indebtedness or organization of a

governmental organization. It applies whether the governmental unit is a state, county, school district, or form of governmental unit and without regard to whether the functions are proprietory or governmental in character.

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## ARGUMENT

### I.

**I. The limiting of the voting franchise to property owners in the creation and maintenance of a watershed improvement district violates the "Equal Protection" clause of the Fourteenth Amendment in that an unreasonable, arbitrary and capricious voting classification is created.**

In enacting the watershed improvement district statute the Wyoming Legislature created a voting classification and limited the voting franchise to only property owners. Wyoming Statutes 1957, Section 41-354.9 states in part:

> B. All owners of land lying within the boundaries of the proposed district, as determined by the board of supervisors, shall be eligible to vote in the referendum. Only such owners of land shall be eligible to vote.

The definition of a landowner is set out in Wyoming Statutes 1957, Section 41-354.1:

> C. "Landowner" means any person, firm or corporation holding title to, or occupying under a contract of purchase, any land

> lying within a watershed improvement district organized or proposed to be organized under the provisions of this act.

The Legislature has chosen to differentiate between two classes of people, landowners on the one hand as defined by the Statute, and non-landowners on the other hand. The issue thus presented for determination is whether or not such a voting classification is permitted under the Equal Protection Clause of the United States Constitution.

It is well settled that a state may classify persons and objects for the purpose of legislation and pass laws applicable only to persons or objects within a designated class. 16 Am Jur 2d, Section 494, page 860. The state has the right to make reasonable classifications and to make voting conditions upon which voting may be exercised. Lassiter vs. North Amington County Board of Elections, 360 U.S. 45, 79 S. Ct. 985, 3 L. Ed. 2d, 1072 (1959); Carrington vs. Rash 380 U.S. 89, 85 S. Ct. 775 (1965).

However, the states do not have a free hand in determining classifications. Each classification must be reasonable and based upon substantial distinctions. 16 Am Jur 2d Constitutional Law Section 498, pages 867-869 states:

> The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth

> Amendment. One of the essential requirements as to classification, in order that it may not violate the constitutional guaranty as to equal protection of the laws, is that the classification must not be capricious or arbitrary, but must be reasonable and natural, and must have a rational basis.

It is further stated in 16 Am Jur 2d, Section 496, page 860:

> It is class legislation, discriminating against some and favoring others, that is prohibited by the equal protection guaranty.

In the case of Carrington v. Rash, 380 U. S. 89, 85 S. Ct. 775 (1965) the general legal principles concerning voting classifications and the Equal Protection Clause of the Fourteenth Amendment were emphasized by this Court. The case involved a Texas statute which excluded any soldier in uniform who moved to Texas from voting regardless of how long the soldier had been present within the state and his intention as to domicile. The Court said, 85 S. Ct. 777:

> Indeed, the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised. In other words, the privilege to vote in a state is within jurisdiction of the state itself, to be exercised as the state may direct, and upon such

> terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution.

And at page 778:

> And mere classification, as this Court has often said, does not of itself deprive a group of equal protection.
>
> But the fact that a state is dealing with a distinct class and treats the members of that class equally does not end the judicial inquiry. The Courts must reach and determine whether the classifications drawn in a statute are reasonable in light of its purpose. . . .

The requirement of a reasonable classification has been recognized by the Wyoming Supreme Court. Bell vs. Gray 377 P.2d 924 (Wyo. 1963), was an action by an insurance company for judgment declaring W. S. 1957, Section 26-67.1 - 67.11 unconstitutional. The statute required that all insurance agents take written exams except those agents selling insurance for cars. The Court in holding such statute unconstitutional quoted from Miller vs. Board of County Commissioners of the County of Natrona, 337 P.2nd, 262, (Wyo. 19), and at page 269:

> There must be some difference which furnishes a reasonable basis for different legislation as to the different classes and not a purely arbitrary one, having no just relation to the subject of the legislation.

In Ludwig vs. Harston 197 P.2d 252, (Wyo. 1948) the Wyoming Supreme Court said at 257:

> The classification must be reasonable in view of the object sought to be accomplished. The discrimination must rest upon some reasonable ground of difference between the persons or things included and those excluded, having regard to the purpose of the legislation and within the sphere of its operation, the statute must affect all persons similarly situated.

The United States Supreme Court has scrutinized statutes which limit the voting franchise to certain people in two recent cases. The case of Kramer vs. Union Free School District, 395 U. S. 621, 89 S. Ct. 1886 decided on June 16, 1969 involved a class action for determination that a New York statute was unconstitutional. The statute limited the franchise in certain school districts to owners or lessees of taxable realty and parents or guardians of children in public schools. The Court held that such limitation of the voting franchise was in violation of the Equal Protection Clause of the Fourteenth Amendment. When the voting franchise is involved, the Courts usually will give the statutes an exacting examination. Justice Warren stated at 395 U.S. 626-627, 89 S. Ct. at 1889-1890:

> Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political

rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. (Citations omitted). This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society. Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.

Thus, state apportionment statutes which may dilute the effectiveness of some citizens votes, receive close scrutiny from this Court (citations omitted). No less rigid an examination is aplicable to statutes denying the franchise to citizens who are otherwise qualified by residence and age. Statutes granting the franchise to residents on a selective basis always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives. Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest. (Citations omitted).

Since the voting franchise is the basis of all liberty, statutes limiting such do not carry

with them the ordinary presumption of constitutionality. This Court stated:

> Accordingly, when we are reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a "rational basis" for the distinctions made are not applicable. (Citations omitted).

The Court pointed out that the states do have latitude in choosing whether officials should be appointed or elected. However, once the election process has been chosen, the Fourteenth Amendment must be followed. As stated in the opinion at 395 U. S. 629, 89 S. Ct. 1889-1890:

> However, once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.

Furthermore, the subject matter of the election is not controlling as to the reasonableness of the classifications. At 395 U. S. 629, 89 S. Ct. 1891 it was stated:

> Our exacting examination is not necessitated by the subject of the election; rather, it is required because some resident citizens are permitted to participate and some are not.

The Court laid down a test to determine if a voting classification would be reasonable and in line with the Fourteenth Amendment. At 395 U. S. 633, 89 S. Ct. 1893, the Court stated:

> The issue is whether the Section 2012 requirements do in fact sufficiently further a compelling state interest to justify denying the franchise to appellant and members of his class.

The second case, decided on the same day as Kramer vs. Union Free School District, was that of Cipriano vs. City of Houma 395 U. S. 701, 89 S. Ct. 1897 (1969). The case was a class action brought by residents of the city to enjoin the city and others from issuing utility revenue bonds. The Louisiana statute which authorized the issuance of the bonds gave the right to vote only to property taxpayers. In declaring that such limitation of the franchise was unconstitutional, the Court in a per curiam opinion relied extensively on the language of the Kramer case and on the fact that both property owners and nonproperty owners would be substantially affected in like degree by the revenue bonds. It is interesting to note that the statute under consideraion was similar to the Wyoming statute in that in addition to limiting the right to vote to property owners, it also required that the bonds could be issued only if they were approved by a majority in number and amount of the property qualified to vote.

The Court reiterated the compelling state interest test of Kramer at 395 U. S. 704, 89 S. Ct. 1899:

> As we noted in Kramer, supra, if a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.

The Court proceeded to set out a further requirement in a classification of the voting franchise. At 395 U. S. 704, 89 S. Ct. 1900 it was stated:

> . . . whether the statute allegedly so limiting the franchise denies equal protection of the laws to those otherwise qualified voters who are excluded depends on whether all those excluded are in fact substantially less interested or affected than those the statute includes. (Citations omitted).

The Supreme Court in Turner V. Fouche, 90 S. Ct. 532 decided on January 19, 1970, had before it an action by negro school children and their fathers against the members of the County Board of Education seeking an injunction prohibiting enforcement of the Georgia constitutional and statutory provisions which first resulted in discrimination on membership of a grand jury and second required that members of the Board of Education be freeholders.

In regard to the freeholder requirement, the Appellants urged that the Kramer and Cipriano cases require that the state show a compelling state interest. The Appellees on the other hand contended that the Kramer and Cipriano cases were not applicable because they involved exclusions from voting, not from office holding. The court in holding that the freeholder requirement was unconstitutional based its decision on the traditional test for the denial of equal protection; that is, whether the challenged classification rests on ground wholly irrelevant to the achievement of a valid state objective. The court stated at p. 542:

> It cannot be seriously urged that a citizen in all other respects qualified to sit on a school board must also own real property if he is to participate responsibly in educational decisions, without regard to whether he is a parent with children in the local schools, a lessee who effectively pays the property taxes of his lessor as part of his rent. . . .
>
> Nor does the lack of ownership of realty establish a lack of attachment to the community and its educational values. However reasonable the assumption that those who own realty do possess such an attachment, Georgia may not rationally presume that the quality is necessarily wanting in all citizens of the county whose estates are less than freehold. . .

> Without excluding the possibility that other circumstances might present themselves in which a property qualification for office-holding could survive constitutional scrutiny, we cannot say, on the record before us, that the present freeholder requirement for membership on the county board of education amounts to anything more than invidious discrimination.

Evans v. Cornman, 90 S. Ct. 1752 decided on June 15, 1970, was an action by individuals living on ground of a federal enclave in Maryland against members of the County Board of Registry to enjoin as unconstitutional the application of the Maryland Voter Residency Law so as to deny them the right to vote. The state argued in the case that the residents were substantially less interested in Maryland's affairs than other residents of the state because the constitution vests exclusive legislation in all cases over the federal enclave in the Congress. The court in citing both Kramer and Cipriano plus other recent cases held that the state did not show a compelling state interest of sufficient magnitude to justify exclusion of people living on tax-exempt property from the voting rolls.

The case of the City of Phoenix Arizona v. Kolodziejski, 90 S. Ct. 1990 decided on June 23, 1970 is especially pertinent in that therein the Court held that an election to approve issuance of a general obligation bond came within the purview of the Kramer and Cipriano

cases. The case was instituted by a resident who was otherwise qualified to vote in an election except for the ownership of real property requirement. The City of Phoenix had held an election to authorize the issuance of eight general obligation bonds and two revenue bonds. Under the Arizona law, property taxes were to be levied to service this indebtedness, although the City was legally privileged to use other revenues for this purpose. Pursuant to Arizona constitutional provisions, only real property owners could vote in the election. In the lower court, the City argued that the Kramer and Cipriano cases were not applicable since here involved were general obligation bonds whereas the Cipriano case involved revenue bonds which were to be retired by the profits from the improvements themselves. According to the state, the state was justified in recognizing the unique interest of real property owners in the case of general obligation bonds since their property would be directly assessed for payment of the bonds and the assessment could become a lien upon the property. Non-property owners on the other hand, the state argued, were under no obligation to pay for the bonds. The Supreme Court in affirming the three judge District Court decision said at 90 S. Ct. 1994:

> The differences between the interests of property owners and the interests of non-property owners are not sufficiently sub-

> stantial to justify exclusion of the latter from the franchise . . .
>
> Property taxes may be paid initially by property owners, but a significant part of the ultimate burden of each year's tax on rental property will very likely be borne by the tenant rather than the landlord since, . . . the landlord will treat the property tax as a business expense and normally will be able to pass all or a large part of this cost on to the tenants in the form of higher rent.

The court then concluded by saying at 1995:

> We thus conclude that, although owners of real property have interests somewhat different than interests of non-property owners in the issuance of general obligation bonds, there is no basis for concluding that non property owners are substantially less interested in the issuance of these securities than are property owners.

The above Supreme Court decisions are now being implemented by the lower Federal Courts, and some of their rulings are relevant to this action.

In the case of Stewart v. Parish School Board of Parish of St. Charles, 310 F. Supp., 1172 (La. Feb. 25, 1970), the court followed the decisions of the Kramer and Cipriano cases in holding that exclusion of non-property owners from school bond elections violated the equal

protection clause of the Constitution. The school board had conducted a special election to decide the issuance of bonds for the capital acquisition and improvement of the public schools. Non-property owners were excluded from the election pursuant to the Louisiana Statute which as in the Cipriano case limited the voting franchise to property owners and further required that the bonds be approved by a "majority in number and amount of the property" of taxpayers' voting. The court in finding no furtherance of a compelling state interest in excluding property owners said at 1177-1178:

> The State's compelling interest in fixing the qualifications of voters in school bond elections is to delegate to the voters in each school district the authority to improve public education in their district. The objective is certainly not promoted by excluding parents and guardians of school children and others who cannot be characterized as having a substantially less interest in public education than property taxpayers.

The court then held that the "majority in number and the amount of property" requirement violated the one-man one-vote. At 1179 it is stated:

> The requirement that the bond issue be approved by a majority of the taxpayers voting representing a "majority of the assessed property owned by those taxpayers

> who are actually voting" apparently rests on the assumption, first, that property owners have a special pecuniary interest; second, that the larger the assessment the greater the need to protect large property owners from irresponsible owners having no property. Kramer and Cipriano cut through the basic assumption. It is not enough to show that included groups have an interest. It must be shown that the exclusions are necessary to promote a compelling state interest. In terms of voting responsibility, there is no necessary correlation between the amount of an assessment and the degree of interest a taxpayer may have in a particular bond issue. A ten thousand dollar house to one person may mean more to that person than a hundred thousand dollar house to another.
>
> The actual effect of gearing assessments to the vote is simply to dilute the participation of small landowners and to exaggerate the participation of large landowners in violation of the one man, one vote canon.

The court continued at 1180 to say:

> It is conceivable that in a small rural school district a handful of taxpayers would have the veto power over public school improvements. In any voting district, the small homeowner would have his vote diluted.

The case of Stapleton v. Clerk for the City of Inkster, 311 F. Supp. 1187, decided April 29, 1970, was an action by a potential candidate for city office for a Writ of Mandamus to direct that his name be put on the ballot. The Plaintiff seeking the office of Councilman was excluded from candidacy due to a requirement in the City Charter that no person should hold any elected office unless he was a resident and a property owner within the city for at least two years. The court held that the statutory requirement was unconstitutional both in light of the traditional standard and also the compelling state interest. The court specifically held at 1190 that:

> It appears to this court that the reasons given for requiring the compelling interest standard in voting cases are equally applicable to cases challenging qualifications for public office; in both situations the challenge is directed to the assumption that the institutions of state government are structured so as to fairly represent all the people. Thus, the City must demonstrate a compelling interest to justify the ownership of real property in the City as a qualification to hold office and the City does not have the advantage of the usual presumption that the Charter is constitutional.
>
> It also appears to the court that the "compelling interest" standard must be applied, since this requirement also burdens

> the voter plaintiffs' right to vote. It is unquestioned that a voter has a constitutionally protected right to vote for the candidate of his choice and to have his votes counted. Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). It is also established, as pointed out previously, that a person has a constitutionally protected right to be considered for public office without the burden of invidiously discriminatory disqualificatons. Turner v. Fouche, 396 U.S. 346, 362, 90 S.Ct. 532, 24 L.Ed.2d 567 (1970). It seems clear to this court that a restriction upon who may be a candidate necessarily affects the efficacy of a person's vote. The effectiveness of the franchise can just as certainly be curtailed by restricting the group from whom candidates may be drawn as by restricting those entitled to cast a vote or by malapportioning a legislative body.

The court further said at 1192:

> The claim that councilmen must be restricted to owners of real property seems to this court merely another way of saying that non-landowners would not act frugally or responsibly.

With the foregoing legal principles established by the United States courts, the question arises as to whether the voting classification created by the statute in Wyoming is necessary to further a compelling state inter-

est, and secondly to see if those excluded from voting are, in fact, substantially less interested and affected than those the statute includes.

Existence of a compelling state interest in enacting the "Watershed Improvement District statute" can best be determined by looking to the purposes of the act. Section 41-354.2 provides:

> **Purposes of Act**—The purposes of this act are to provide for the prevention and control of erosion, floodwater and sediment damages, and the storage, conservation development, utilization and disposal of water, and thereby to preserve and protect land and water resources, and to protect and promote the health, safety and general welfare of the people of this state.

Non-property owners are as much interested in their environment as are property owners and the preservation of the land by prevention and control of erosion, floodwater and sediment damages is a matter of general public interest. Protection and preservation of land and water resources promotes and leads to improved fishing and recreational facilities, which are items of interest and benefit to all people and not just landowners. Nonlandowners are also interested in the "health, safety and general welfare" of all the people of this state. By recitation of the purposes of the Act it is made clear that the subject mat-

ter of the legislation is of interest to all voters. No compelling state interest is demonstrated by the statute to justify the denial of the voting franchise to non-landowners.

In regard to the second requirement of the Kramer and Cipriano cases, non-property owners are not in fact substantially less interested or affected than property owners. The statute under consideration herein involves the creation of Watershed Improvement Districts. Lands within a district are affected in the same way whether they are being utilized directly by a landowner or leased to a non-landowner. Lessees do not fall within the scope of a landowner, see Wyoming Statutes 1957, Sec. 41-351.1. However, a lessee, just like a landowner, benefits from the use of the water to the same degree as a property owner. As the landowners and non-landowners used the utilities and paid the rates in the Cipriano case, landowners and non-landowners in the water improvement district will both use the water and pay the rates to the same degree. Although the benefits of the water improvement district will be directly assessed against the landowners, the lessees in reality will pay for such in the form of increased rental payments. Indeed, the benefits and burdens of the water improvement district will fall indiscriminately on landowner and non-landowner alike.

It is possible that a person living without the district in a distant state or country could

have inherited lands within the district. Nevertheless, this individual qualifies as a landowner under the Watershed Improvement Dstrict and has the right to petition for the establishment and vote in the election for the creation of a Watershed Improvement District. However, a lessee who is residing on the land within the district, who depends upon the land for his very livelihood and who is vitally concerned with anything which affects his land is excluded from determining the future of the land. The statute has no reasonable basis for classifying people by landowners or non-landowners, just as there was no such basis in the Cipriano case.

In addition to limiting the voting franchise by an arbitrary classification, the Water Improvement District makes further unreasonable and unconstitutional classification in the rights for petitioning for the establishment of a district, qualifications of the Board of Directors and the right to nominate candidates for directors.

> Section 41-354.5. When a majority of the landowners in the proposed district, desire to form a watershed improvement district, they shall file a petition with the board of supervisors of the soil and water conservation district . . .
>
> Section 41-354.12. C. Nominating petitions may be filed with the board of super-

> visors to nominate candidates for directors of the watershed improvement district. No such nominating petition shall be accepted by the board of supervisors unless it shall be signed by ten (10) or more owners of land. . . No person shall be eligible to be a director of a watershed improvement district who is not an owner of the land within the watershed improvement district in which he seeks election.

Here again a lessee is capriciously excluded from participating in the creation and operation of a water improvement district. The lessee is equally interested in and affected by a petition for the establishment of the Water Improvement District as is the landowner. He is as equally interested and affected by the actions of the Board of Directors as is a landowner. His status as a lessee precludes him from choosing members of the Board, and also precludes him from serving as a member of the Board of Directo[illegible].

The statute as enacted will permit a landowner who resides without the district to be a board member to vote for the Board, to govern the operation by serving as a board member, but it excludes a lessee who resides therein laboriously and conscientiously working the land from qualifying. Thus both landowners and non-landowners are in fact equally inter-

ested and affected by the creation and operation of the Water Improvement District in the same degree, and the distinction between them as created by the statute is unconstitutional.

II.

**II. The weighting of the votes by a majority of the acreage is a debasement of the votes of the smaller property owners and is violative of the one man-one vote rule.**

Since its inception in 1963 the one-man one-vote principle has progressively and consistently been broadened to envelop both national, state and local popular elections.

The one-man one-vote concept sprang from the case of Gray vs. Sanders, 372 U. S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963). That case was a suit by qualified voters to restrain the defendants from using the unit system as a basis for counting votes in a primary election for statewide offices. The Supreme Court, Justice Douglas speaking, held that the Federal District Court properly enjoined the conduct of statewide primary election under counting units system which gave every qualified voter one vote, but which in counting the vote employed a system which in end result weighted rural votes more heavily than urban votes and weighted some small rural counties heavier than other larger counties. The Court

in its opinion used the following pertinent language, 83 S. Ct. 808, 809:

> Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of 'we the people' under the Constitution visualizes no preferred class of votes but equality among those who meet the basic qualifications.
>
> But once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.
>
> The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person one vote.

One-man one-vote was extended in 1964 to congressional district plans enacted by state legislatures that embodied discrimination in the exercise of the voting franchise. The case of Wesberry vs. Sanders, 376 U. S. 1, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964) was an action by

qualified voters to strike down Georgia's statute prescribing congressional districts. The Supreme Court reversed a three judge district court and held that apportionment of congressional districts so that a single Congressman represented from two to three times as many fifth district voters as were represented by each of the congressmen from other Georgian districts, grossly discriminated against voters in the fifth district in violation of the constitutional requirements that representatives be chosen by people of the several states. Justice Black in his opinion made the following statements, 376 U. S. 7, 8, 9:

> The apportionment statute thus contracts the value of some votes and expands that of others.
>
> We hold that construed in its historical contents the command of Article I Section 2 that representatives be chosen by people of the several states means that as nearly as is practical one-man vote in a congressional election is to be worth as much as another.
>
> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which as good citizens we must live. Other rights, even the most basic are illusionary if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

The next forward step which entrenched the one-man one-vote principle as a viable constitutional doctrine was in Reynolds vs. Sims et al, 377 U. S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506, (1964) and its companion cases. The Reynolds cases involved the Alabama legislature reapportionment. The Supreme Court held that the one-man one-vote principal was applicable to both state legislative houses and that both houses must be apportioned on a population basis. The Court found that the federal analogy to the senate was inapposite. The following language was used in the opinion:

> To the extent that a citizen's right to vote is debased, he is that much less a citizen. 377 U.S. at 567, 84 S. Ct. at 1384.
>
> Citizens, not history or economic interests, cast votes. Considerations of area alone provide insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures vote. 377 U.S. 580, 84 S. Ct. at 1391.

The Reynolds case has been followed in Schaffer vs. Thompson, 240 F. Supp. 247 (Wyo. 1964) wherein the Wyoming state legislature apportionment was held invidious discrimination and violative of the equal protection laws of the Fourteenth Amendment.

In 1967, the Supreme Court declined to extend the one-man one-vote rule in the case of

Sailors vs. Board of Education, 387 U. S. 105, 87 S.Ct. 1549 (1967). The case involved a Michigan school board whereby the county boards were chosen by delegates who were selected by a local board. The Court refused to apply the one-man one-vote principle on the grounds that the Board of Education performed merely administrative functions rather than legislative ones, and that the positions were basically appointed rather than elective. The application of the Sailors case has been restricted by subsequent Supreme Court decisions and has validity only in situations directly in point, that is, where the officials perform merely administrative functions and in addition are appointed rather than being elected.

The next big expansion of the one-man one-vote principle occurred in the case of Avery vs. Midland County, Texas, 390 U.S. 474, 88 S. Ct. 1114 (1968). Midland County, Texas had five county commissioners. One of these, the judge, was elected by popular vote from the entire populace. The remaining four were elected from districts. One commissioner was elected from a district encompassing the City of Midland which had a population of 67,-906, while the remaining three were elected from districts, each of which had less than 1,-000 pople. The Supreme Court held that the election of county commissioners, even though such was a local election, was within the blanket of the Fourteenth Amendment, since the commissioners exercised general govern-

ment functions. The Court made the following statements:

> The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the State. U.S. at 479, 88 S. Ct. at 1117-1118.
>
> A city, town or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of law. 390 U.S. at 480, 88 S. Ct. at 1118.
>
> Our decision today is only that the Constitution imposes one ground rule for the development of arrangements of local government: a requirement that units with gen ral governmental powers over an entire geographical area not be apportioned among single-member districts of substantially unequal population. 390 U. S. at 485-486, 88 S. Ct. at 1121.
>
> We hold today that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general goverental powers over the entire geographic area served by the body. 390 U.S. at 484-485, 88 S. Ct. at 1120.

Out of the Avery case came the test that if the officials to be elected possessed general governmental powers, the election came within the purview of one-man one-vote and must be based on population.

The final step in the expansion of the one-man one-vote principle came with the decision in the Hadley vs. Junior College District of Metropolitan Kansas City, U.S. 90 S. Ct. 790, 25 L. Ed. 2d 45 (1970). The case was an appeal from the Missouri Supreme Court, which, relying upon the Avery decision, had held that the statute for the election of the trustees of a college district was constitutional since the one-man one-vote rule was inapplicable due to the fact that the trustee did not have general governmental powers over the entire district. Pursuant to the statute, fifty percent of the trustees of the college district were elected from a subdistrict having sixty percent of the school age children. Residents of the subdistrict had sued on the theory that their vote was diluted. The Supreme Court reversed the Missouri Court and held the statute unconstitutional. The Court at 90 S. Ct. 794 stated:

> We have applied this principle in congressional elections, state legislative elections, and local elections. The consistent theme of those decisions is that the right to vote in an election is protected by the United States Constition against dilution or debasement.

The Court repudiated the general governmental powers test of the Avery decision and dispelled the theory that the applicability of the Fourteenth Amendment would be determined by the purpose of the election. The Court said at 90 S. Ct. 794:

> . . . there is no discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election. If one person's vote is given less weight through unequal apportionment, his right to equal voting participation is impaired just as much when he votes for a school board member as when he votes for a state legislator. While there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process.

The Court continued by expressly overruling the legislative vs. administrative function test. At 90 S. Ct. 795, the Court stated:

> It has also been urged that we distinguish for apportionment purposes between elections for "legislative" officials and those for "administrative" officers. Such a suggestion would leave courts with an equally unmanageable principle since governmental activities "cannot easily be classified in the neat categories favored by civics texts", (Citation omitted), and it must also be rejected.

The Court then laid down the rule of the case at 90 S. Ct. 795:

> We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election. . .

The impact and breadth of the Hadley decision was especially brought forth in Mr. Justice Harlan's dissenting opinion. The Justice stated at 90 S. Ct. 797:

> And today, the Court holds the "one man one vote" rule applicable to the various boards of trustees of Missouri's junior college system, and the case forbodes, if indeed it does not decide, that the rule is to be applied to every elective public body, no matter what its nature.

Justice Harlan took particular issue with the abolition of the general powers rule of the Avery decision at 90 S. Ct. 797, where he stated:

> The Midland County Commissioners Court, the body whose composition was challenged in Avery, was found to possess a broad range of powers that made it "representative of most of the general govern-

> ing bodies of American cities, counties, towns and villages" and the Court was at pains to limit its holding to such general bodies. 390 U. S. at 482-485, 20 L. Ed. 2d at 52-54. Today the Court discards the limitation, stating that "there is no discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election".

Justice Harlan then continued to state:

> From irrigation districts to air pollution control agencies to school districts, such units vary in the magnitude of their impact upon various constituencies and in the manner in which the benefits and burdens of their operations interact with other elements of the local political and economic picture. Today's ruling will forbid these agencies from adopting electoral mechanisms and take these variations into account.

The Wyoming Watershed Improvement District statute definitely and unequivocally meets the two criteria of the Hadley case for application of the one-man one-vote principle.

First, the state has elected to choose the popular election process in the creation of the watershed improvement district. Section 41-354.8 of the Statutes provides that a referendum shall be a prerequisite to the establish-

ment of the district. Section 41-354.10 provides in part:

> . . . provided, however, that the board of supervisors shall not have authority to determine that the operation of watershed improvement district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum which affirmative votes represent (a) majority of the acreage contained in the proposed watershed improvement district, favored creation of the watershed improvement district.

Thus, even though the board of supervisors make the formal declaration of the creation of the watershed improvement district, their decision is controlled by and made contingent upon the vote of the qualified voters.

In addition to the creation of the watershed improvement district, the state has also decided to use the popular election process to determine the issuance of bonds. Section 41-354.14 states in part:

> A. Bonds authorized by Section 13 shall not be issued until proposed by order or resolution of the board of directors. . .
>
> B. The board of directors shall conduct a hearing on such a proposal after due notice of such hearing has been given. If it appears that the proposal was within the scope and purpose of this act and meets all the other requirements of the

> law, the proposal shall be submitted to the land owners of the watershed improvement district by a referendum held under the supervision of the board of supervisors.

The election process used in the creation of a watershed improvement district and in the determination of the issuance of the bonds taken individually or collectively fulfill the popular election requirement of the Hadley decision.

Looking now at the governmental function requirement of the Hadley decision, the watershed improvement district certainly comes within the scope of such requirement. Section 41-354.10 provides in part:

> . . . such watershed improvement district shall thereupon constitute a governmental subdivision of this state and a public body corporate and politic.

Besides being a governmental subdivision, the watershed improvement districts vest in the board of directors powers which are very clearly governmental functions. Section 41-354.13 provides:

> Under the supervision of the board of supervisors, the board of directors of a watershed improvement district shall have the power to:
>
> A. Levy and collect assessments for special benefits accruing to land, as hereinafter provided.

B. Acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; maintain, administer, and improve any such property; and sell, lease or otherwise dispose of any such property in furtherance of the purposes and provisions of this act (Sections 41-354.1 to 41-354.26.)

C. Exercise the power of eminent domain and in the manner provided by law for the condemnation of private property for public use.

D. Construct, improve, operate and maintain such structures as may be necessary for the performance of any authorized function of the watershed improvement district.

E. Borrow such money as is necessary to carry out any of the purposes and provisions of this act and issue, negotiate, sell its bonds or other evidence of indebtedness, as provided in Section 14 (Section 41-354.1).

F. Cooperate with, and receive from or grant assistance to, towns, cities, counties and state and federal agencies in carrying out the purposes and provisions of this act.

It is beyond argument that these powers are governmental functions, and in fact constitute legislative functions rather than administra-

tive functions. For example, the power of eminent domain is inherently governmental. See 26 Am Jur 2d Eminent Domain, Section 2, Page 64. Taxation in the form of assessments is a governmental function, and the issuance of bonds for public improvements is a governmental function, 51 Am Jur 2d Taxation Sec. 2.

Since the watershed improvement district statute meets the requirements of the Hadley decision and hence falls within the purview of the one-man one-vote principle, it must now be decided whether or not the one-man one-vote principle has been followed therein. It definitely has not.

The statute sets up a voting procedure which results in the weighting of certain votes and the dilution of others. Section 41-354.10 provides in part:

> . . . the board of supervisors shall not have authority to determine that the operation of the watershed improvement district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum which affirmative votes represent (a) majority of the acreage contained in the proposed watershed improvement district, favor creation of the watershed improvement district.

Thus in addition to having a majority of votes of all the qualified votes there must also be a majority of the acreage. This results in a large landowner's vote carrying greater weight than

the smaller landowner's vote. It is theoretically possible that ninety-nine percent of the qualified voters could vote in the affirmative, but if one percent of the people held fifty-one percent of the land and voted negatively the water improvement district could not be approved and created. This is a circumstance where land, and not people, is voting. It is well to again note the language of Justice Warren.

> Again, people, not land or trees or pastures, vote. Reynolds v. Sims et al, 377 U. S. 533, 580, 84 S. Ct. 1362, 1391.

It may be argued that the larger acreage owners have a special pecuniary interest in the election because of their assessments being larger than the smaller land owners. However, the special pecuniary interest idea has been rejected by the Supreme Court in Cipriano vs. City of Yuma, supra. Obviously, the voting setup here contracts the value of some votes and expands that of others.

In the recent case of Stewart vs. Parish School Board of Parish of St. Charles, 310 F. Supp. 1172, affirmed by the United States Supreme Court 136 a three judge District Court held a restriction that only property owners could vote in bond elections for a school district unconstitutional as a restriction, weighting the value of an elector's vote to the amount of his assessed valuation was unconstitutional. Gearing the weight of an elector's vote in a road bond election to the voter's assessed val-

uation was also stricken down in Louisiana by the United States Supreme Court in Police Jury of Parish of Vermilion vs. Hebert, 92 S. Ct. 52 (1971). In the instant case the restriction is based upon acres owned, a distraction without a difference from what has been held to be unconstitutional.

In addition to the creation of the watershed improvement district, the Wyoming statutes also provide for the weighting of any larger landowner's votes in the issuance of the bonds. Section 41-354.14 provides in part:

> D. If two thirds of the votes cast, which votes represent a majority of the acreage contained in the watershed district, are in favor of the proposed bond issue, such bonds shall be authoried and may be issued.

Here again there is a clear debasement of a man's vote. Here again economic interest and not citizens are allowed to cast their votes. Such voting arrangements are clearly unconstitutional and should be struck down by this court.

While some of the older cases, such as Mound vs. Miller, 70 S. W. 721 (Mo. 1902) have constitutionally permitted the weighting of votes by acreage in drainage districts, it must be noted that these older cases have been largely eroded by time and by recent Supreme Court decisions.

In its decision the Wyoming Supreme Court stated at 490 P. 2d 1070:

> Without reviewing the watershed improve district laws section by section, we can state categorically that the functions of such districts are proprietory and in the nature of special or private corporation purposes. The districts do not exercise delegated sovereign powers for the benefit of people generally. We need to make it clear that we are not saying a watershed improvement district is not a governmental entity. We merely say the functions are primarily proprietory and not governmental.

Such test was expressly revoked in the Hadley case, and the Wyoming Court felt required to recognize the holding of Hadley with the following observation at 490 P.2d 1072:

> The writer of this opinion believes there is sometimes a tendency for judges and courts to overreact to decisions of the United States Supreme Court.

The Wyoming Court then concluded, 490 P.2d 1072:

> It is apparent then, from the majority opinion and from the dissents in the Hadley decision, that the one man, one vote rule has not been extended to a local, specialized unit of government such as a watershed improvement district. We reject the idea that we should so extend the rule.

The Wyoming Supreme Court found comfort in the law relating to private corporations and the right of shareholders to vote not by one man, one vote, but the number of shares owned.

The grounds for upholding the constitutionality of the Wyoming Watershed Improvement District amount to nothing more than a naked refusal to follow the law as enunciated by this Court.

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## CONCLUSION

By way of summation, Appellants contend the statute under which Toltec was organized and created is unconstitutional.

The United States Courts have held a classification of voters who are to exercise the voting franchise is not presumed to be constitutional but must be proven to be constitutional. Such Courts have also recognized that states may classify voters eligible to vote, but hold the classification must be reasonable and based upon substantial distinctions.

Under the statute providing for the organization and operation of the Toltec Watershed Improvement District, the statutory purposes are stated to be for the benefit of all the people of the state. But only landowners are allowed to vote, not all the people who will be benefited by the statute. Only landowners may serve on the Board of Directors of the

District. The value of the votes cast is weighted so that large landowners carry greater weight than lessees and small landowners. Bonds may be issued only by the same election processes designed to enfranchise landowners and disenfranchise non-landowners and weight the larger landowners' votes.

Appellants contend such statute diluted the vote of Associated Enterprises and disenfranchised Johnston Fuel Liners and also completely disenfranchised the people living on the ranches but not owners of the land in the District. No compelling state interest is demonstrated by the statute or by Appellee to justify such a result. Under Kramer and Cipriano, Appellee has the burden of showing the constitutionality.

The concept of one man-one vote has steadily been extended and no classification of compelling state interest which erodes the one man-one vote concept seems constitutional.

The concept has been extended to congressional elections, state legislative elections and local elections involving the selection of school boards, county commissioners, bond elections and, according to Justice Harlan, was extended to irrigation districts. But the Wyoming Supreme Court simply refuses to recognize the law as enunciated by the Supreme Court of the United States.

It is submitted the decisions of the Albany County District Court of Wyoming and the Wyoming Supreme Court should be reversed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, HENRY A. BURGESS, Attorney for Appellants in the above entitled and numbered cause, hereby certify that on the_____day of July, 1972 I served true and correct copies of Brief of Appellants by placing the same in the United States mail, postage prepaid at Sheridan, Wyoming, correctly addressed to:

Mr. Fred Phifer
Attorney at Law
Wheatland, Wyoming 82201

HENRY A. BURGESS

# APPENDIX A

## CHAPTER 6.1.

### Watershed Improvement Districts.

Sec.


41-354.1. Definitions.

41-354.2. Purposes of act.

41-354.3. Formation.

41-354.4. Area.

41-354.5. Petition for establishment—Filing generally, contents; copy to be furnished soil and water conservation committee.

41-354.6. Same — Establishment in more than one soil and water conservation district.

41-354.7. Same—Hearing; notice.

41-354.8. Referendum prerequisite to establishment—Generally.

41-354.9. Same—Voting ballots; right of landowner to vote; proxies.

41-354.10. Same — Counting and recording votes; action upon results; certification of fact when created.

41-354.11. Inclusion of additional land; detaching land; change of boundaries; change of name.

41-354.12. Board of directors — Eligibility; nominating petition; election; terms; officers.

41-354.13. Same—Powers generally.
41-354.14. Same—Issuance of bonds.
41-354.15. Same—Per diem and mileage.
41-354.16. Hearing on proposed projects.
41-354.17. Appointment of appraisers and appraisal of benefited property.
41-354.18. Hearing on report of appraisers.
41-354.19. Appeal from approval of project or determination of benefits or assessments.
41-354.20. Assessment of benefits against land of state and its subdivisions.
41-354.21. Assessments generally.
41-354.22. Levy, collection and disposition of taxes and special assessments; expenditure of funds.
41-354.23. Lien of assessment; collection of delinquent assessments.
41-354.24. Discontinuance of districts.
41-354.25. Supervision by state soil and water conservation committee upon discontinuance.
41-254.26. Existing water rights preserved.

**§ 41-354.1. Definitions.**—A "Director" means a director of a watershed improvement district and "board of directors" means the governing body of a watershed improvement district.

B. "Supervisor" means a supervisor of the soil and water conservation district in which a watershed improvement district is situated; and "board of supervisors" means the governing body of the soil and water conservation district in which a watershed improvement district is situated.

C. "Landowner" means any person, firm or corporation holding title to, or occupying under contract of purchase, any land lying within a watershed improvement district organized under the provisions of this act. [§§ 41-354.1 to 41-354.26].

D. "Due notice" means notice published at least twice, with an interval of at least six (6) days between the two publication dates, in a newspaper of general circulation within the boundaries of the proposed or organized district, and by posting at five (5) conspicuous places within the organized or proposed district, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. The notice of any hearing, election or referendum required to be held under this act shall fix the time, place and purpose thereof, which time shall be not less than ten (10) or more than fifteen (15) days after the first publication or first posting of such notice. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the neces-

sity of renewing such notice for such adjourned dates. (Laws 1961, ch. 215, § 1.)

**§ 41-354.2. Purposes of act.** — The purposes of this act [§§ 41-354.1 to 41-354.26] are to provide for the prevention and control of erosion, floodwater and sediment damages, and the storage, conservation development, utilization, and disposal of water, and thereby to preserve and protect land and water resources, and protect and promote the health, safety, and general welfare of the people of this state. (Laws 1961, ch. 215, § 2.)

**§ 41-354.3. Formation.**—Watershed improvement districts may be formed as subdistricts of soil and water conservation districts as herein provided for the development and execution of plans and projects relating to any of the purposes set forth in section 2 [§ 41-354.2]. (Laws 1961, ch. 215, § 3.)

**§41-354.4. Area.** — The land area embraced in a watershed improvement district must lie within the same or adjoining watershed or subwatershed areas. A watershed improvement district may embrace land lying in one or more soil and water conservation districts. Land lying within the boundaries of one watershed improvement district shall not be included in another watershed improvement district. (Laws 1961, ch. 215, § 4.)

**§ 41-354.5. Petition for establishment — Filing generally; contents; copy to be furnished soil and water conservation committee.** —

When a majority of the landowners in the proposed district, desire to form a watershed improvement district, they shall file a petition with the board of supervisors of the soil and water conservation district in which the proposed watershed improvement district is situated asking that a watershed improvement district be organized to function in the area described in the petition. Such petition shall set forth the boundaries of the proposed district, the number of acres of land involved, the reasons for requesting creation of such district, and the proposed name of such watershed improvement district. A copy of such petition shall be furnished to the state soil and water conservation committee. (Laws 961, ch. 215, § 5.)

**§ 41-354.6. Same—Establishment in more than one soil and water conservation district.** —If a proposed watershed improvement district is situated in more than one soil and water conservation district, copies of such petition shall be presented to the board of supervisors of all the soil and water conservation districts in which any part of the proposed watershed improvement district is situated, and the supervisors of all such soil and water conservation districts shall act jointly as a board of supervisors with respect to all matters concerning such watershed improvement district, including its organization. Such watershed improvement district shall be organized in like manner and shall have the same powers and

duties as a watershed improvement district situated entirely in one soil and water conservation district. (Laws 1961, ch. 215, § 6.)

**§ 41-354.7. Same — Hearing; notice.** — A. Within thirty days after such petition has been filed with or presented to the board of supervisors, it shall cause due notice to be given of a public hearing upon the practicability and feasibility of creating the proposed watershed improvement district. All owners of land within the proposed watershed improvement district and all other interested parties shall have the right to attend such hearing and to be heard. The state soil and water conservation committee may furnish advice and assistance to the board of supervisors in connection with such hearing. If it apears upon the hearing that any land included in the petition will not be benefited by its inclusion within the proposed watershed improvement district, the board of supervisors shall exclude such land from the proposed watershed improvement district.

B. If it appears upon the hearing that it may be desirable to include within the proposed watershed improvement district territory outside of the area described in such petition, the hearing shall be adjourned and due notice of a further hearing shall be given throughout the entire area considered for inclusion in such district, and a further hearing shall be held. After final hearing, if the board of supervisors determines, upon the facts presented at the

hearing and upon other available information, that there is need, in the interest of the public health, safety and welfare for such a district to function in the territory considered at the hearing, it shall make and record such determination and shall define by metes and bounds or by legal sub-divisions, the boundaries of such district. The board of supervisors, in making such determination, may advise and consult with the state soil and water conservation committee.

C. If the board of supervisors determines after the hearing that there is no need for such a district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. (Laws 1961, ch. 215, § 7.)

**§ 41-354.8. Referendum prerequisite to establishment—Generally.**—After the board of supervisors has made and recorded a determination that there is a need, in the interest of the public health, safety and welfare, for the creation of the proposed watershed improvement district, it shall consider the question whether the operation of such a district within the proposed boundaries with the powers conferred upon such district in this act [§§ 41-354.1 to 41-354.26] is administratively practicable and feasible. To assist the board of supervisors in this determination, the board shall, within not more than sixty days after entry of the finding that there is need for organization of such a district and the deter-

mination of the boundaries of such district, hold a referendum within the proposed district upon the proposition of the creation of such district. Due notice of such referendum shall be given by the board of supervisors. Such notice shall state the date of holding the referendum, the hours of opening and closing the polls and shall designate one or more places within the proposed district as polling places. The board of supervisors shall appoint a polling superintendent and other necessary polling officers. (Laws 1961, ch. 215, § 8.)

**§ 41-354.9. Same—Voting; ballots; right of landowners to vote; proxies.**—A. The question to be voted on shall be submitted by ballots upon which the words "For creation of_____ _____Watershed Improvement District" and "Against creation of_____ Watershed Improvement District" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of the proposed watershed improvement district as determined by the board of supervisors.

B. All owners of land lying within the boundaries of the proposed district, as determined by the board of supervisors, shall be eligible to vote in the referendum. Only such owners of lands shall be eligible to vote. Any such owner who is unable because of illness or absence

from the district to appear at the polls, may appoint in writing on a form prescribed by the state soil and water conservation committee and acknowledged before a notary public or other officer authorized to administer oaths, an agent or proxy to cast a ballot for him. The appointment of agent or proxy shall be presented to the polling officers, and if it is found to be bona fide and in proper form, the holder thereof shall be allowed to vote in behalf of the owner executing the appointment. Prior to casting his ballot, each owner shall present to the polling officers an affidavit stating that he is an owner of land within the district and showing the number of acres he owns and his interest therein, and each agent or proxy shall present a similar affidavit executed by the landowner for whom he is voting. Each landowner shall be entitled to one vote in the referendum. (Laws 1961, ch. 215, § 9.)

**§ 41-354.10. Same—Counting and recording votes; action upon results; certification of fact when created.**—The votes cast in the referendum shall be counted by the polling officers at the close of the polls and a report of the results, along with the ballots, shall be delivered to the polling superintendent, who shall certify the results to the board of supervisors; and the board shall then consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the board of supervisors shall determine that the opera-

tion of the watershed improvement district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the board of supervisors shall determine that the operation of the watershed improvement district is administratively practicable and feasible, it shall declare the watershed improvement district to be created; provided, however, that the board of supervisors shall not have authority to determine that the operation of the watershed improvement district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum, which affirmative votes represent [a] majority of the acreage contained in the proposed watershed improvement district, favor creation of the watershed improvement district. Upon declaring the watershed improvement district to be created, the board of supervisors shall certify the fact of the creation of such district to the county clerk of the county or counties in which such district is situated for recordation; and such watershed improvement district shall thereupon constitute a governmental subdivision of this state and a public body corporate and politic. After being recorded, the certificate of the board of supervisors shall be filed with the secretary of state, and a copy thereof shall be filed with the state soil and water conservation committee. (Laws 1961, ch. 215, § 10.)

**§ 41-354.11. Inclusion of additional land; detaching land; change of boundaries; change of**

**name.**—A. Petitions for including additional territory within an existing watershed improvement district may be filed with the board of supervisors, and in such cases the proceedings herein provided for with respect to petitions to organize watershed improvement districts shall be observed to the extent deemed practicable in acting upon petitions for such inclusion. In determining whether the operation of a watershed improvement district, including such additional territory, will be administratively practicable and feasible, the board of supervisors shall advise and consult with the directors of the existing watershed improvement district. Where the total number of owners of land in the area proposed for inclusion shall be less than ten (10), the petition may be filed when signed by a majority of the owners of land in such area, representing a majority of the acreage contained in such area, and in such case no referendum need be held. If the board of supervisors makes a determination in favor of the inclusion of additional territory, it shall certify the fact of such inclusion of additional territory to the county clerk of the county or counties in which the watershed improvement district is situated. After being recorded, the certificate of the board of supervisors shall be filed with the secretary of state and a copy thereof shall be filed with the state soil and water conservation district.

B. The owner or owners of land which has not been, is not, and cannot be benefited by its inclusion in the watershed improvement district may petition the board of supervisors to have such land withdrawn. The petition shall describe such land and state the reasons why it should be withdrawn. A hearing shall be held within thirty (30) days after the petition is received. Due notice of such hearing shall be given by the board of supervisors. If it is determined by the board of supervisors that such land has not been, is not, and cannot be benefited by its inclusion in the watershed improvement district, such land shall be withdrawn from the district. A copy of such determination and withdrawal shall be certified to the county clerk of each county in which any portion of such withdrawn land is situated. After being recorded, the certification shall be filed with the secretary of state and a copy thereof shall be filed with the state soil and water conservation committee.

C. Petitions for a change in the boundaries of watershed improvement districts may be filed with the board or boards of supervisors of the soil and water conservation district or districts to be affected. The board of supervisors of the soil and water conservation district or joint board of supervisors if more than one soil and water conservation district is affected may require such hearings or referenda as it deems appropriate to enable it to make a determination as to the desirablity of the pro-

posed change. If the board of supervisors or joint board of supervisors makes a determination in favor of the change in boundaries, it shall certify the fact of such change to the county clerk of the county or counties in which such watershed improvement district is situated and shall notify the board of directors of the watershed improvement district, setting out in such notice the new boundaries of the district. After being recorded, the certificate of the board of supervisors shall be filed with the secretary of state and a copy thereof shall be filed with the state soil and water conservation committee.

D. Petitions for a change of name of a watershed improvement district may be submitted to the board or board of supervisors of the soil and water conservation district or districts in which the watershed improvement district is situated. If the board of supervisors approves the change of name, it shall certify the fact of such change of name to the county clerk of the county or counties in which the watershed improvement district is situated and shall notify the board of directors of the watershed improvement district of such change. After being recorded, the certificate shall be filed with the secretary of state and a copy thereof shall be filed with the state soil and water conservation committee. (Laws 1961, ch. 215, § 11.)

**§ 41-354.12. Board of directors—Eligibility; nominating petition; election; terms; officers.**

—A. Within thirty days after a watershed emprovement district is created, the board of supervisors shall cause an election to be held for the election of a board of directors of the watershed improvement district. Due notice of such election shall be given by the board of supervisors. The board of directors shall consist of five members. The first board of directors shall determine by lot from among its membership, two members to serve terms of one year, two members to serve terms of two years, and one member to serve a term of three years. Thereafter, as these initial terms expire, the members of the board of directors shall be elected for terms of three years. Vacancies occurring before the expiration of a term shall be filled for the unexpired term by appointment by the remaining members of the board of directors with the approval of the board of supervisors. The board of directors shall, under the supervision of the board of supervisors, be the governing body of the water shed improvement district.

B. The board of directors shall annually elect from its membership a chairman, secretary, and treasurer. The treasurer shall execute a surety bond for the faithful performance of the duties of his office, which bond shall be approved by the board of directors. Any premium for such bond shall be paid by the watershed improvement district. The district shall be subject to an annual audit of its accounts by the state examiner.

C. Nominating petitions may be filed with the board of supervisors to nominate candidates for directors of the watershed improvement district. No such nominating petition shall be accepted by the board of supervisors unless it shall be signed by ten (10) or more owners of land lying within the boundaries of such watershed improvement district, or by a majority of such owners if there be less than ten (10). Such owners may sign more than one such nominating petition to nominate more than one candidate for director. No person shall be eligible to be a director of a watershed improvement district who is not an owner of land within the watershed improvement district in which he seeks election. (Laws 1961, ch. 215, § 12.)

**§ 41-354.13. Same—Powers generally.**—Under the supervision of the board of supervisors, the board of directors of a watershed improvement district shall have power to:

A. Levy and collect assessments for special benefits accruing to land, as hereinafter provided.

B. Acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, maintain, administer, and improve any such property; and sell, lease, or otherwise dispose of any such property in furtherance of the purposes and provisions of this act [§§ 41-354.1 to 41-354.26].

C. Exercise the power of eminent domain and in the manner provided by law for the condemnation of private property for public use.

D. Construct, improve, operate and maintain such structures as may be necessary for the performance of any authorized function of the watershed improvement district.

E. Borrow such money as is necessary to carry out any of the purposes and provisions of this act, and issue, negotiate, sell its bonds or other evidence of indebtedness as provided in section 14 [§ 41-354.14].

F. Cooperate with, and receive from or grant assistance to, towns, cities, counties, and state and federal agencies in carrying out the purposes and provisions of this act. (Laws 1961, ch. 215, § 13.)

**§ 41-354.14. Same—Issuance of Bonds.**—A. Bonds authorized by section 13 [§ 41-354.13] shall not be issued until proposed by order or resolution of the board of directors specifying the purpose for which the funds are to be used, the rate of interest the bonds are to bear, the amount of the proposed bond issue, terms of the bonds, and the proposed method of payment and redemption of the bonds prior to maturity. A copy of the order or resolution shall be certified to the board of supervisors.

B. The board of directors shall conduct a hearing on such proposal after due notice of such hearing has been given. If it appears

that the proposal is within the scope and purpose of this act [§§ 41-354.1 to 41-354.26] and meets all other requirements of the law, the proposal shall be submitted to the landowners of the watershed improvement district by a referendum held under the supervision of the board of supervisors.

C. The provisions of sections 7, 8, 9, and 10 [§§ 41-354.7 to 41-354.10], as to notice and manner of holding a referendum in organizing a watershed improvement district shall be applicable to the referendum held under this section.

D. If two-thirds of the votes cast, which votes represent a majority of the acreage contained in the watershed improvement district, are in favor of the proposed bond issue, such bonds shall be authorized and may be issued.

E. Bonds authorized and issued shall bear interest at a rate not exceeding ten per centum (10%) per annum, payable annually, and shall be due and payable not more than fifty (50) years from their dates. The form, terms, and provisions of such bonds, provision for their payment and provisions for their retirement and calling not inconsistent with law, shall be determied by the board of supervisors. Such bonds shall be exempt from all state, county, municipal, school, and other taxes imposed by a taxing authority of this state. (Laws 1961, ch. 215, § 14; 1971, ch. 254, § 37.)

The 1971 amendment increased the interest rate in subsection (E) from six percent to ten percent.

**§ 41-354.15. Same—Per diem and mileage.**—Members of the board of directors shall receive no salaries, but such members may be entitled to expenses for meetings and travel in the performance of their duties as approved by the board of supervisors. (Laws, ch. 215, § 15.)

**§ 41-354.16. Hearing on proposed projects.**—Before any contract shall be let or work begun upon any improvement or project within the watershed improvement district, the cost of which cannot be exclusively financed by funds on hand, grants in aid, or financial assistance or gifts to the district, or before any contract may be entered into by the district with any governmental agency or body which will obligate the district to contribute financially beyond the extent of funds of the district then on hand, it shall be the duty of the board of directors to set a time and place within the district for a public hearing upon such proposal. Due notice of such hearing shall be given by the board of directors.

At the time and place fixed for such hearing any owner of land situated within the watershed improvement district, or any other interested person, may appear and be heard as to his objections to such proposal.

Following the public hearing the board of directors shall, by order or resolution, either affirm the proposal with or without modification or amendments, or disapprove the proposal. If the board of directors affirms the proposal, it shall determine the probable cost of and the proposed method of financing the improvement or project, the benefits to be derived therefrom, and whether the benefits will be conferred upon all land within the watershed improvement district or upon only certain land within the district, in which latter case the land to be benefited shall be described as to boundaries, ownership, and approximate acreage. (Laws 1961, ch. 215, § 16.)

**§ 41-354.17. Appointment of appraisers and appraisal of benefited property.**—If the board of directors determines that the proposed improvement or project should be constructed and that the costs thereof should be paid by special assessment against the land benefited by such improvement or project, it shall appoint three qualified and disinterested residents of the state to act as appraisers. The appraisers shall inspect the plans and specifications of the proposed improvement or project and examine all land likely to be benefited thereby. The appraisers shall make and file with the board of directors a detailed report showing all tracts of land within the watershed improvement district found to be benefited, together with the acreage thereof, the name of the record owner of each tract, the

amount each tract will be benefited, and the amount of assessment to be levied against each tract, which assessment against each tract shall be in proportion to the benefits accruing to such tract. Any necessary expenses connected with making the appraisal by the three appraisers shall be paid by the watershed improvement district. (Laws 1961, ch. 215, § 17.)

**§ 41-354.18. Hearing on report of appraisers.**—Upon receiving the report of the appraisers the board of directors shall fix a time and place within the watershed improvement district for hearing any complaint that may be made regarding the benefits appraised to any tract of land or the assessment proposed to be levied against any tract of land. Dut notice of such hearing shall be given by the board of directors. At the time and place fixed for such hearing the board of directors shall consider the report of the appraisers and consider and hear any objections filed or voiced thereto. The board of directors shall, by order or resolution, reject the report of the appraisers or accept the report and ratify it with or without modification or amendments. (Laws 1961, ch. 215, § 18.)

**§ 41-354.19. Appeal from approval of project or determination of benefits or assessments.**—Any owner of land or person having an interest therein upon which an assessment is proposed to be levied may, within thirty (30) days from such order or resolution of the

board of directors accepting the report of the appraisers, file with the clerk of the district a written notice making demand for trial by the court. The notice shall state definitely from what part of such order or resolution the appeal is taken and shall set forth any other objections of the apellant [appellant]. In case more than one appeal is taken, the court may, upon finding that the appeals may be consolidated without injury to the interests of anyone, consolidate and try the appeals together. Any hearing on appeal provided for herein in the district court shall be de novo, and the district court shall consider not only the question of procedure but also the merits of the point or points appealed from, including but not limited to eminent domain proceedings. Any appeal from a decision of the district court shall follow the usual rules of civil procedure.

If no appeal is taken within the time prescribed in this section from such order or resolution of the board of directors accepting the report of the appraisers, or after finding of the court in case an appeal is taken from such order or resolution of the board of directors, then such assessments shall be final and conclusive and shall constitute perpetual liens upon the land so assessed until they are fully paid. (Laws 1961, ch. 215, § 19.)

**§ 41-354.20. Assessment of benefits against land of state and its subdivisions.** — In case land belonging to the state, or a county, school district, or other public corporation is bene-

fited by any improvement or project constructed under the provisions of this act [§§ 41-354.1 to 41-354.26], all of such benefits shall be assessed against such land and the assessments shall be paid by the proper authorities at the same time as the assessments are called and paid in the cases of private persons. (Laws 1961, ch 215, § 20.

**§ 41-354.21. Assessments generally.** — The board of directors shall, on or before the third Monday in July of each year, certify to the board of county commissioners of the county within the watershed improvement district in which assessed lands is located the amount of the annual installments of assessments against such land, together with a fair proportionate amount of the estimated operating and maintenance charges apportioned to such land for the next succeeding year. Thereupon the county commissioners shall certify to and deliver such assessment roll to the county assessor of such county and such county assessor shall extend the amounts so certified on the tax roll as a flat special assessment against the land benefited. Such assessments shall be subject to the same interest and penalties in case of delinquency as in the case of general taxes, and shall be collected at the same time and in the same manner as in the case of general taxes; provided, that such assessments shall become due and payable only at such times and in such amounts as may be determined by the board of directors; and provided

further, that any person having an interest in land assessed under this act [§§ 41-354.1 to 41-354.26] may at any time within thirty (30) days after the order of the board of directors has become final and effective as provided in section 19 [§ 41-354.19], pay to the tax collector the amount of the assessments against his land or any tract thereof, and said payment shall relieve said land from the lien of said assessment for the cost of the improvement or project.

The board of directors in making the annual assessments and levies as herein provided, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, the maturing of bonds and interest on all bonds, and deficiencies and defaults of prior years, and shall make ample provisions for the payment thereof; provided however, that no one yearly call for assessment by the board of directors shall be in an amount to exceed ten per centum (10%) of the actual amount necessary to defray the cost of the construction of such improvement or project. (Laws 1961, ch. 215, § 21.)

**§ 41-354.22. Levy, collection and disposition of taxes and special assessments; expenditure of funds.**—It shall be the duty of the officer or body having authority to levy taxes within each county, to levy the taxes and special assessments as provided in this act [§§ 41-354.1 to 41-354.26] and it shall be the duty of all county officials, charged with the duty of collecting taxes, to collect the taxes and special assess-

ments as provided in this act in the time, form and manner and with like interest and penalties as city or county taxes are collected, and when collected to pay the same to the board of directors of the watershed improvement district ordering their levy and collection and the payments of such collections shall be made through the treasurer of the watershed improvement district and deposited in the depository thereof to the credit of such district. All expenditures of such funds shall be made by the board of directors upon order of the board, under the supervision of the board of supervisors. (Laws 1961, ch. 215, § 22.)

**§ 41-354.23. Lien of assessment; collection delinquent assessments.**—All taxes and assessments levied against any land under this act [§§ 41-354.1 to 41-354.26] together with all interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall, until paid, constitute a perpetual lien upon such land on a parity with the tax lien of general, state, county, city, town or school taxes and no sale of such land to enforce any general, county, city, town or school tax or other liens shall extinguish the perpetual lien of such taxes and assessments. If the taxes and assessments levied are not paid as herein provided, then such land shall be sold at the regular tax sale for the payment of said taxes and assessments, interest and penalties, in the manner provided by the statutes of this state for selling real property for non-pay-

ment of general taxes. (Laws 1961, ch. 215, § 23.)

**§ 41-354.24. Discontinuance of districts.**—A. At any time after five years from the organization of a watershed improvement district, ten or more landowners within the district, or if less than twenty landowners are involved, a majority of the landowners in such district, may file a petition with the board of supervisors, praying that the existence of the watershed improvement district be discontinued. The petition shall state the reasons for discontinuance, and that all maintenance and operation assurances and other obligations of the district have been met. A copy of such petition shall be furnished to the secretary of state and to the state soil and water conservation committee.

B. After giving due notice of a hearing on such petition, the board of supervisors may conduct such hearing on the petition as may be necessary to assist it in making a determination.

C. Within sixty (60) days after the petition is filed, a referendum shall be held under the supervision of the board of supervisors substantially as provided for in section 8 [§ 41-354.8]. No informalities in the conduct of the referendum or in any matters relating to the referendum shall invalidate it or its results if due notice of the referendum has been given.

D. If a majority of the votes cast in such referendum favor the discontinuance of the watershed improvement district, and the board of supervisors determines that all maintenance and operation assurances and other obligations of the district have been met, the watershed improvement district shall be discontinued. A copy of such determination and discontinuance shall be certified to the county clerk of the county or counties involved for recordation. After being recorded, the certification shall be filed with the secretary of state and a copy thereof shall be filed with the state soil and water conservation committee. (Laws 1961, ch. 215, § 24.)

**§ 41-354.25. Supervision by state soil and water conservation committee upon discontinuance.**—If any soil and water conservation district in which a watershed improvement district is situated is discontinued, the state soil and water conservation committee shall thereafter serve in the same supervising capacity over the watershed improvement district as was therefore served by the board of supervisors of such soil and water conservation district. (Laws 1961, ch. 215, § 25.)

**§ 41-354.26. Existing water rights preserved.**—Nothing in this act [§§ 41-354.1 to 41-354.26] shall be so construed as to in any manner impair existing water rights, appropriations or priorities. (Laws 1961, ch. 215, § 26.)